

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

MARK ACE DE LUNA
P O Box 751
Tustin, CA 92781

Case No. 2011-608

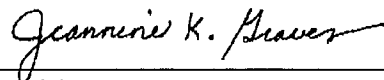
Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **May 4, 2011**.

IT IS SO ORDERED **April 4, 2011**.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Statement of Issues
14 Against:

Case No. 2011-608

15 **MARK ACE DE LUNA**
P. O. Box 751
Tustin, CA 92781

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
20 Registered Nursing. She brought this action solely in her official capacity and is represented in
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds,
22 Senior Legal Analyst.

23 2. Respondent Mark Ace De Luna (Respondent) is representing himself in this
24 proceeding and has chosen not to exercise his right to be represented by counsel.

25 3. On or about June 7, 2010, Respondent filed an application for licensure by
26 examination dated June 2, 2010, with the Board of Registered Nursing to obtain a Registered
27 Nurse License. The Board denied Respondent's application on August 9, 2010. Respondent
28 timely appealed the denial of his application for licensure by examination.

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1 Registered Nursing may communicate directly with the Board regarding this stipulation and
2 settlement, without notice to or participation by Respondent. By signing the stipulation,
3 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
4 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
5 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
6 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
7 the parties, and the Board shall not be disqualified from further action by having considered this
8 matter.

9 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
10 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
11 effect as the originals.

12 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
13 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
14 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
15 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
16 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
17 writing executed by an authorized representative of each of the parties.

18 13. In consideration of the foregoing admissions and stipulations, the parties agree that
19 the Board may, without further notice or formal proceeding, issue and enter the following
20 Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that the application of Respondent, Mark Ace De Luna, for
23 licensure by examination is hereby granted. Upon successful completion of the licensure
24 examination and all other licensing requirements, a license shall be issued to Respondent. Said
25 license shall immediately be revoked, the order of revocation stayed and Respondent placed on
26 probation for a period of two (2) years on the following conditions:

27 **Severability Clause.** Each condition of probation contained herein is a separate and
28 distinct condition. If any condition of this Order, or any application thereof, is declared

unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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1 Respondent shall provide a list of all states and territories where he has ever been licensed
2 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
3 information regarding the status of each license and any changes in such license status during the
4 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
5 license during the term of probation.

6 5. **Submit Written Reports.** Respondent, during the period of probation,
7 shall submit or cause to be submitted such written reports/declarations and verification of actions
8 under penalty of perjury, as required by the Board. These reports/declarations shall contain
9 statements relative to Respondent's compliance with all the conditions of the Board's Probation
10 Program. Respondent shall immediately execute all release of information forms as may be
11 required by the Board or its representatives.

12 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
13 state and territory in which he has a registered nurse license.

14 6. **Function as a Registered Nurse.** Respondent, during the period of
15 probation, shall engage in the practice of registered nursing in California for a minimum of 24
16 hours per week for 6 consecutive months or as determined by the Board.

17 For purposes of compliance with the section, "engage in the practice of registered nursing"
18 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
19 non-direct patient care position that requires licensure as a registered nurse.

20 The Board may require that advanced practice nurses engage in advanced practice nursing
21 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

22 If Respondent has not complied with this condition during the probationary term, and
23 Respondent has presented sufficient documentation of his good faith efforts to comply with this
24 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
25 extension of Respondent's probation period up to one year without further hearing in order to
26 comply with this condition. During the one year extension, all original conditions of probation
27 shall apply.

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1 7. **Employment Approval and Reporting Requirements.** Respondent shall
2 obtain prior approval from the Board before commencing or continuing any employment, paid or
3 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to his employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within seventy-two
9 (72) hours after he obtains any nursing or other health care related employment. Respondent
10 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
11 regardless of cause, from any nursing, or other health care related employment with a full
12 explanation of the circumstances surrounding the termination or separation.

13 8. **Supervision.** Respondent shall obtain prior approval from the Board
14 regarding Respondent's level of supervision and/or collaboration before commencing or
15 continuing any employment as a registered nurse, or education and training that includes patient
16 care.

17 Respondent shall practice only under the direct supervision of a registered nurse in good
18 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
19 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
20 approved.

21 Respondent's level of supervision and/or collaboration may include, but is not limited to
22 the following:

23 (a) Maximum - The individual providing supervision and/or collaboration is
24 present in the patient care area or in any other work setting at all times.

25 (b) Moderate - The individual providing supervision and/or collaboration is in
26 the patient care unit or in any other work setting at least half the hours Respondent works.

27 (c) Minimum - The individual providing supervision and/or collaboration has
28 person-to-person communication with Respondent at least twice during each shift worked.

1 (d) Home Health Care - If Respondent is approved to work in the home health
2 care setting, the individual providing supervision and/or collaboration shall have person-to-person
3 communication with Respondent as required by the Board each work day. Respondent shall
4 maintain telephone or other telecommunication contact with the individual providing supervision
5 and/or collaboration as required by the Board during each work day. The individual providing
6 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
7 patients' homes visited by Respondent with or without Respondent present.

8 9. **Employment Limitations.** Respondent shall not work for a nurse's
9 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
10 traveling nurse, or for an in-house nursing pool.

11 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
12 registered nursing supervision and other protections for home visits have been approved by the
13 Board. Respondent shall not work in any other registered nursing occupation where home visits
14 are required.

15 Respondent shall not work in any health care setting as a supervisor of registered nurses.
16 The Board may additionally restrict Respondent from supervising licensed vocational nurses
17 and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of nursing or as an
19 instructor in a Board approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
23 request documentation to determine whether there should be restrictions on the hours of work.

24 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
25 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
26 than six months prior to the end of his probationary term.

27 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
28 Respondent shall submit to the Board the original transcripts or certificates of completion for the

1 above required course(s). The Board shall return the original documents to Respondent after
2 photocopying them for its records.

3 **11. Violation of Probation.** If Respondent violates the conditions of his
4 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
5 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

6 If during the period of probation, an accusation or petition to revoke probation has been
7 filed against Respondent's license or the Attorney General's Office has been requested to prepare
8 an accusation or petition to revoke probation against Respondent's license, the probationary
9 period shall automatically be extended and shall not expire until the accusation or petition has
10 been acted upon by the Board.

11 **12. License Surrender.** During Respondent's term of probation, if he ceases
12 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
13 probation, Respondent may surrender his license to the Board. The Board reserves the right to
14 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
15 take any other action deemed appropriate and reasonable under the circumstances, without further
16 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
17 longer be subject to the conditions of probation.

18 Surrender of Respondent's license shall be considered a disciplinary action and shall
19 become a part of Respondent's license history with the Board. A registered nurse whose license
20 has been surrendered may petition the Board for reinstatement no sooner than the following
21 minimum periods from the effective date of the disciplinary decision:

22 (1) Two years for reinstatement of a license that was surrendered for any reason other
23 than a mental or physical illness; or

24 (2) One year for a license surrendered for a mental or physical illness.

25 **13. Physical Examination.** Within 45 days of the effective date of this
26 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
27 physician assistant, who is approved by the Board before the assessment is performed, submit an
28 assessment of the Respondent's physical condition and capability to perform the duties of a

1 registered nurse, including a determination as set forth below in Condition 15, "Rule-Out
2 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
3 the Board. If medically determined, a recommended treatment program will be instituted and
4 followed by the Respondent with the physician, nurse practitioner, or physician assistant
5 providing written reports to the Board on forms provided by the Board.

6 If Respondent is determined to be unable to practice safely as a registered nurse, the
7 licensed physician, nurse practitioner, or physician assistant making this determination shall
8 immediately notify the Board and Respondent by telephone, and the Board shall request that the
9 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
10 immediately cease practice and shall not resume practice until notified by the Board. During this
11 period of suspension, Respondent shall not engage in any practice for which a license issued by
12 the Board is required until the Board has notified Respondent that a medical determination
13 permits Respondent to resume practice. This period of suspension will not apply to the reduction
14 of this probationary time period.

15 If Respondent fails to have the above assessment submitted to the Board within the 45-day
16 requirement, Respondent shall immediately cease practice and shall not resume practice until
17 notified by the Board. This period of suspension will not apply to the reduction of this
18 probationary time period. The Board may waive or postpone this suspension only if significant,
19 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
20 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
21 Only one such waiver or extension may be permitted.

22 14. **Mental Health Examination.** Respondent shall, within 45 days of the
23 effective date of this Decision, have a mental health examination including psychological testing
24 as appropriate to determine his capability to perform the duties of a registered nurse, including a
25 determination as set forth below in Condition 15, "Rule-Out Substance Abuse Assessment."

26 The examination will be performed by a psychiatrist, psychologist or other licensed mental health
27 practitioner approved by the Board. The examining mental health practitioner will submit a
28 written report of that assessment and recommendations to the Board. All costs are the

responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. Rule-Out Substance Abuse Assessment. If the examiner conducting the physical and/or mental health examination determines that Respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then Respondent must further comply with the following additional terms and conditions of probation.

(A) Participate in Treatment/Rehabilitation Program for Chemical Dependence. Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a

1 Board-approved treatment/rehabilitation program prior to commencement of probation,
2 respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.

3 If a program is not successfully completed within the first nine months of probation, the Board
4 shall consider respondent in violation of probation.

5 Based on Board recommendation, each week respondent shall be required to attend at
6 least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
7 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by
8 the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent
9 shall be added. Respondent shall submit dated and signed documentation confirming such
10 attendance to the Board during the entire period of probation. Respondent shall continue with the
11 recovery plan recommended by the treatment/rehabilitation program or a licensed mental health
12 examiner and/or other ongoing recovery groups.

13 (B) **Abstain From Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
14 completely abstain from the possession, injection or consumption by any route of all psychotropic
15 (mood altering) drugs, including alcohol, except when the same are ordered by a health care
16 professional legally authorized to do so as part of documented medical treatment. Respondent
17 shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health
18 professional, a report identifying the medication, dosage, the date the medication was prescribed,
19 the respondent's prognosis, the date the medication will no longer be required, and the effect on
20 the recovery plan, if appropriate.

21 Respondent shall identify for the Board a single physician, nurse practitioner or
22 physician assistant who shall be aware of Respondent's history of substance abuse and will
23 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled
24 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
25 assistant shall report to the Board on a quarterly basis respondent's compliance with this
26 condition. If any substances considered addictive have been prescribed, the report shall identify a
27 program for the time limited use of any such substances.

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1 The Board may require the single coordinating physician, nurse practitioner, or
2 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
3 addictive medicine.

4 (C) **Submit to Tests and Samples.** Respondent, at his expense, shall participate in a
5 random, biological fluid testing or a drug screening program which the Board approves. The
6 length of time and frequency will be subject to approval by the Board. The respondent is
7 responsible for keeping the Board informed of respondent's current telephone number at all
8 times. Respondent shall also ensure that messages may be left at the telephone number when
9 he/she is not available and ensure that reports are submitted directly by the testing agency to the
10 Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by
11 the program and the respondent shall be considered in violation of probation.

12 In addition, respondent, at any time during the period of probation, shall fully
13 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
14 tests and samples as the Board or its representatives may require for the detection of alcohol,
15 narcotics, hypnotics, dangerous drugs, or other controlled substances.

16 If respondent has a positive drug screen for any substance not legally authorized and
17 not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
18 Board files a petition to revoke probation or an accusation, the Board may suspend respondent
19 from practice pending the final decision on the petition to revoke probation or the accusation.
20 This period of suspension will not apply to the reduction of this probationary time period.

21 If respondent fails to participate in a random, biological fluid testing or drug
22 screening program within the specified time frame, the respondent shall immediately cease
23 practice and shall not resume practice until notified by the Board. After taking into account
24 documented evidence of mitigation, if the Board files a petition to revoke probation or an
25 accusation, the Board may suspend respondent from practice pending the final decision on the

26 petition to revoke probation or the accusation. This period of suspension will not apply to the
27 reduction of this probationary time period.

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1 (D) **Therapy or Counseling Program.** Respondent, at his expense, shall
2 participate in an on-going counseling program until such time as the Board releases him/her from
3 this requirement and only upon the recommendation of the counselor. Written progress reports
4 from the counselor will be required at various intervals.

5 **ACCEPTANCE**

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated
8 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
9 bound by the Decision and Order of the Board of Registered Nursing.

10
11 DATED: 02/02/11


12 MARK ACE DE LUNA
13 Respondent

14 **ENDORSEMENT**

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
17 Affairs.

18
19 Dated: 2/24/2011

Respectfully submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 LINDA K. SCHNEIDER
23 Supervising Deputy Attorney General



24 AMANDA DODDS
25 Senior Legal Analyst
26 *Attorneys for Complainant*

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Exhibit A

Statement of Issues No. 2011-608

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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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12 In the Matter of the Statement of Issues
Against:

Case No. 2011-608

13 **MARK ACE DE LUNA**
14 **P. O. Box 751**
Tustin, CA 92781

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about June 7, 2010, the Board of Registered Nursing, Department of Consumer
23 Affairs received an application for a Registered Nurse License from Mark Ace De Luna
24 (Respondent). On or about June 2, 2010, Mark Ace De Luna certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. On July 6,
26 2010, Mark Ace De Luna suffered a criminal conviction for driving under the influence of
27 alcohol. The Board denied the application on August 9, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
20 the conviction shall be conclusive evidence thereof.

21 9. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

25 (b) Use any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
28 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

///

1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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5 REGULATORY PROVISIONS

6 10. California Code of Regulations, title 16, section 1444 states:

7 A conviction or act shall be considered to be substantially related to the
8 qualifications, functions or duties of a registered nurse if to a substantial degree it
9 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

10 (a) Assaultive or abusive conduct including, but not limited to, those violations
11 listed in subdivision (d) of Penal Code Section 11160.

12 (b) Failure to comply with any mandatory reporting requirements.

13 (c) Theft, dishonesty, fraud, or deceit.

14 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

15 11. California Code of Regulations, title 16, section 1445 states:

16 (a) When considering the denial of a license under Section 480 of the code,
17 the board, in evaluating the rehabilitation of the applicant and his/her present
eligibility for a license will consider the following criteria:

18 (1) The nature and severity of the act(s) or crime(s) under consideration as
19 grounds for denial.

20 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
under consideration as grounds for denial which also could be considered as grounds
21 for denial under Section 480 of the code.

22 (3) The time that has elapsed since commission of the act(s) or crime(s)
referred to in subdivision (1) or (2).

23 (4) The extent to which the applicant has complied with any terms of parole,
24 probation, restitution, or any other sanctions lawfully imposed against the applicant.

25 (5) Evidence, if any, of rehabilitation submitted by the applicant.

26
27 ///

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FIRST CAUSE FOR DENIAL OF APPLICATION

(July 6, 2010 Criminal Convictions for DUI on April 6, 2010)

12. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2761, subdivision (f) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about July 6, 2010, in a criminal proceeding entitled *People of the State of California v. Mark Ace V. Deluna, aka Mark A. Deluna, et al.*, in Orange County Superior Court (Central Justice Center), case number 10CM04242, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (Count 1); and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration of .08 percent or higher (Count 2), misdemeanors.

b. As a result of the convictions, on or about July 6, 2010, as to Count 1, Respondent was sentenced to three years informal probation. Respondent was further ordered to complete a six-month Level 2 First Offender Alcohol Program and a MADD seminar, pay fees, fines, and restitution in the amount of \$833, and comply with standard alcohol conditions. The court stayed sentencing on Count 2.

c. The facts that led to the convictions are that on or about the early morning of April 6, 2010, a patrol officer with the Tustin Police Department observed a vehicle driven by Respondent driving in an unsafe manner. The officer stopped Respondent and questioned him. The officer noted that Respondent had a moderate odor of an alcoholic beverage on his breath and the interior of the vehicle. Respondent admitted he had consumed alcohol earlier in the evening. Respondent's eyes were bloodshot and watery, and exhibited signs of nystagmus. Respondent agreed to submit to field sobriety tests; he was not able to complete the tests as instructed and demonstrated. Respondent agreed to submit to a preliminary alcohol screen (PAS) which registered two samples at .167 and .179 percent blood alcohol concentration (BAC), over twice the legal limit. Respondent was arrested and charged with driving under the influence.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

3 13. Respondent's application is subject to denial under sections 480, subdivision
4 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about April 6, 2010, Respondent
5 used alcoholic beverages to an extent or in a manner dangerous or injurious to himself and the
6 public when he operated a motor vehicle with a BAC of .17 percent, as detailed in paragraph 12,
7 above.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

10 14. Respondent's application is subject to denial under sections 480, subdivision
11 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about July 6, 2010, Respondent was
12 convicted of a criminal offense involving the consumption of alcohol as detailed in paragraph 12,
13 above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

- 17 1. Denying the application of Mark Ace De Luna for a Registered Nurse License;
18 2. Taking such other and further action as deemed necessary and proper.

19 DATED: 1-11-2011

20 Louise R. Bailey
21 LOUISE R. BAILEY, M.ED., RN
22 Executive Officer
23 Board of Registered Nursing
24 Department of Consumer Affairs
25 State of California
26 Complainant

24 SD2010702745